



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Claims Against the Dealer Bond  
of Joseph Vasquez, d/b/a TJ Auto Sales

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Case No.: TR-01-0037

**FINAL DECISION**

On April 15, 2001, Jennifer Rott filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Joseph Vasquez, d/b/a TJ Auto Sales. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals. The undersigned Administrative Law Judge issued a Preliminary Determination as required by Wis. Admin. Code § Trans 140.26(5)(a) on November 16, 2001. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Jennifer Rott  
1408 Hyland Drive  
Stoughton, WI 53589

Joe Vasquez  
d/b/a TJ Auto Sales  
2204 Highway 51/138  
Stoughton, WI 53589

Capitol Indemnity Corporation  
P. O. Box 5900  
Madison, WI 53705

**FINDINGS OF FACT**

1. Joseph Vasquez, d/b/a TJ Auto Sales, (Dealer) is a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to Wis. Stat. § 218.0111. The Dealer's facilities are located at 2204 Highway 51/138, Stoughton, Wisconsin.

2. The Dealer had a surety bond satisfying the requirements of Wis. Stat. §218.0114(5)(a) in force from October 8, 1999. (Bond #574017 from Capitol Indemnity Corporation.)

3. On March 17, 2001, Jennifer Rott responded to a mobile billboard sign posted by the Dealer. The message on the sign stated “Your Choice \$2995! Trades/Low Prices.” Ms. Roth attempted to purchase a 1989 Chevy C-10 pick-up truck that was on the Dealer’s lot. The truck had a sticker price of \$5,500. The Dealer indicated that the truck was not one of the vehicles for sale at the \$2,995 price and refused to sell it to her at that price.

4. On March 20, 2001, Ms. Rott filed a complaint with the Department of Transportation, Dealer Section (Dealer Section) against the Dealer. In response to the questions of the investigator from the Dealer Section, the Dealer asserted that the mobile billboard sign was intended to refer to a print advertisement that listed the vehicles for sale at the \$2995 price. After completing his investigation, the investigator concluded that the mobile billboard sign was misleading because the sign did not state that the sale price applied to only selected vehicles on the Dealer’s lot. On April 12, 2001, the investigator advised the Dealer that the mobile billboard sign constituted a violation of Wis. Admin. Code § Trans 139.03(1) and recommended that the Dealer sell the vehicle to Ms. Rott for the \$2995 sale price.

5. The Dealer refused to sell the vehicle to Ms. Rott for \$2995. On April 15, 2001, Ms. Rott filed a claim against the Dealer’s surety bond. The amount of the claim is \$2995, the advertised sale price.

6. Based on the evidence in the record, the mobile billboard sign is misleading and constitutes a violation of Wis. Admin. Code § Trans 139.03(1). However, it is not clear that Ms. Rott sustained an actual loss as a result of the violation. The amount Ms. Rott is seeking in the bond claim she filed, \$2995, represents the advertised sale price of the vehicle she attempted to buy. This is not a loss she sustained. The loss she sustained, if any, would be the difference between the retail value of the 1989 Chevy C-10 pick-up truck she attempted to purchase and the \$2995 sale price. The sticker price of the vehicle was \$5,500; however, there is no conclusive evidence that this is the retail value of the truck.

Additionally, there is no conclusive evidence that Ms. Rott was actually ready, willing, and able to buy the truck. There is an indication that she and her husband attempted to purchase the truck prior to the sale, but were refused because of a lack of credit. Since no purchase contract was executed, it is speculative whether the Rotts could have purchased the truck even if they had wanted to.

7. The bond claim was filed within three years of the ending date of the period the Capitol Indemnity Corporation bond was in effect and is, therefore, a timely claim.

8. Jennifer Rott did not sustain a measurable loss as the result of an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is not allowable.

## DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin. Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01(3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. [*recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats., (1999-2000)*].

. . . .

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1), identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. In this case, there is evidence that the mobile billboard sign posted by the Dealer was misleading and may constitute a violation of Wis. Admin. Code § Trans 139.03(1). However, it is not clear that Ms. Rott sustained a loss as result of this violation. If anything, because of the Dealer's misleading advertisement, Ms. Rott was denied a potential windfall, but she did not suffer a measurable loss.

## CONCLUSIONS OF LAW

1. Jennifer Rott's claim arose on March 17, 2001, the date she attempted to purchase a truck from Joseph Vasquez, d/b/a TJ Auto Sales. The surety bond issued to Joseph Vasquez, d/b/a TJ Auto Sales, by Capitol Indemnity Corporation was in effect at this time. The claim arose during the period covered by the surety bond.

2. Jennifer Rott filed a claim against the motor vehicle dealer bond of Joseph Vasquez, d/b/a TJ Auto Sales on April 15, 2001. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. There is evidence that the actions of Joseph Vasquez, d/b/a TJ Auto Sales, may constitute a violation of Wis. Admin. Code § Trans 139.03(1). A violation of Wis. Admin. Code § Trans 139.03(1) would be grounds for suspension or revocation of the motor vehicle dealer license of Joseph Vasquez, d/b/a TJ Auto Sales. However, Jennifer Rott has not shown that she has sustained a measurable loss as a result of the violation. Accordingly, the claim is not allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

### ORDER

The claim filed by Jennifer Rott against the motor vehicle dealer bond of Joseph Vasquez, d/b/a TJ Auto Sales, is DENIED.

Dated at Madison, Wisconsin on January 10, 2002.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_  
Mark J. Kaiser  
Administrative Law Judge

**NOTICE**

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.